IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.46 of 2008
TUNNA @ TUNNA MIAN @ TUNNA MIAN @ MOBIN ANSARI
Versus
STATE OF BIHAR
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2 14.11.2008 This revision application has been preferred against the order dated 24.12.2007 passed by the Additional Sessions Judge, Fast Track Court No. V, Bettiah in Sessions Trial No. 04 of 2007 thereby the learned court below has rejected the prayer of the petitioner to declare him as juvenile.

Heard learned counsel for the parties.

It appears that this petitioner is an accused in Mainatand P.S. Case No.66/07 registered under Sections 302 and 201 of the Indian Penal Code. The date of occurrence is 16.11.2006.In course of trial, a petition was filed on behalf of the petitioner to declare him as juvenile as his age on the alleged date of occurrence was much less than eighteen years. In support of it, school leaving certificate of Government Primary Urdu School Shekhawa Basantpur was also filed showing his date of birth as 15.1.1991. It appears from the impugned order that learned Sessions Judge did not rely on the school leaving certificate and called for a report from the Medical Board. The Medical Board submitted its report dated 17.5.2007 with a finding that the age of the petitioner on the date of examination was about seventeen years. However, in spite of that the learned Sessions Judge did not declare the petitioner as juvenile and rejected the petition.

Submission of learned counsel for the petitioner is that the order of the court below is against the settled principle of law. First of

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all the court ought to have relied upon the school leaving certificate of a Government School showing the petitioner as less than eighteen years on the alleged date of occurrence. In case of any difficulty, the court has to rely upon the findings of the Medical Board which also goes to show that on the alleged date of occurrence the age of the petitioner was much below than eighteen years. It is further submitted that against those documents there was no other document or material before the court below to show that the petitioner was major on the alleged date of occurrence. The order of the court below is perverse and against the well settled principle of law

Considered the submission of the learned counsel for the petitioner. Perused the impugned order as also the report of the Medical Board. According to the report of the Medical Board the age of the petitioner on the alleged date of occurrence was about sixteen and half years but the learned court below has given a margin of two years upward and has held the petitioner as major on the alleged date of occurrence. Apparently, the order of the court below is illegal and bad in law. Taking any view of the matter, the age of the petitioner is much less than eighteen years on the alleged date of occurrence.

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Accordingly, this application is allowed and impugned order of the court below is set aside. The petitioner is hereby declared to be juvenile aged about sixteen and half years on the alleged date of occurrence.

B.Jha **(Ghanshyam Prasad)**